



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145170

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 04, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's FS benefits effective October 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner's date of entry into the United States as a legal permanent resident was August 27, 2008 and the Petitioner's wife's date of entry was August 28, 2008.

3. On October 27, 2011, Petitioner completed an online ACCESS application for FS benefits. The agency processed the application on October 28, 2011 and approved FS benefits for the Petitioner.
4. On September 17, 2012, a review was completed. The agency discovered that it had approved FS benefits to the Petitioner in error due to Petitioner not being a qualifying immigrant for 5 years before receiving FS benefits.
5. On September 18, 2012, the agency issued a Notice of Decision to the Petitioner notifying him that his FS benefits would end effective October 1, 2012.
6. On November 12, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

An individual who is lawfully admitted to the U.S. for permanent residence is eligible for FS benefits if one of the following conditions is met

- meets work quarters, or
- meets military requirement , or
- receives disability benefit, or
- under age 18, or
- has lived in the US as a qualified alien for 5 years from the date of entry, or
- a legal resident on August 22, 1996, and born before August 22, 1931

FSH, § 3.12.1.1.

The Petitioner concedes that he did not meet these criteria at the time of his application and that he will not likely meet any of the conditions for eligibility until October, 2013 when he will have lived in the U.S. for 5 years. He filed an appeal primarily because of his concern regarding repayment of the FS overpayment that resulted from the agency error in approving FS benefits for him.

CONCLUSIONS OF LAW

The agency properly terminated the Petitioner's FS benefits because the Petitioner does not meet the eligibility requirements for benefits.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

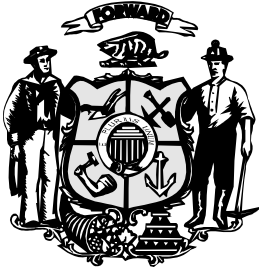
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of January, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 10, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability